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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,762	12/31/2003	Keith A. Etling	038190/269125	9125
67141 7590 11/29/2007 ALSTON & BIRD, LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER PICKARD, ALISON K	
			ART UNIT 3676	PAPER NUMBER
			MAIL DATE 11/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/749,762

Applicant(s)

ETLING, KEITH A.

Examiner

Alison K. Pickard

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-14,25-27 and 29-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,9-14,25-27 and 29-36 is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date ____.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

1. Upon further consideration, the allowability of claims 1, 3, and 5-7 have been withdrawn. The examiner regrets any inconvenience.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by LaRoche.

LaRoche discloses an apparatus comprising a sealing member having an attachment portion 50 fixed to a surface (e.g. of 14) and a seal/deformable portion 40 connected to attachment portion. The surfaces of 10 and 14 form an aperture that fully receives the deformable segment. An engagement member (the other 50) extends from one of the surfaces to further define the aperture and receive the deformable segment 40. A filler 42 is disposed in the aperture. And a coating 26 extends continuously across the sealing member and two surfaces.

4. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Hazen.

Hazen discloses an apparatus comprising a sealing member having an attachment portion 24 fixed to a surface (of 46) and a sealing portion 25 that is a deformable segment positioned fully within a receiving aperture defined by the surfaces 46. A filler 14 is disposed within an area in the aperture. An engagement member 15 extends from one of the surfaces to further define the aperture and receive the deformable segment. A coating 48 is disposed on the sealing member and two surfaces and is continuous across the seal and at least one of the surfaces.

1. (Currently amended) An apparatus for sealing at least two surfaces, comprising:
a sealing member having an attachment portion fixed to one of the surfaces, said sealing member also including a seal portion connected to said attachment portion, wherein the seal portion comprises a deformable segment that faces the surfaces, wherein the deformable segment is made of an elastomer sponge material;

a receiving aperture defined by at least one of the surfaces, wherein said receiving aperture is adapted to receive and retain the deformable segment of the seal portion of said sealing member; and

a coating disposed on said sealing member and the at least two surfaces, said coating extending continuously across said sealing member and at least one of the surfaces; and

a filler disposed within and filling an area in the receiving aperture, between the deformable segment and the surface to which the sealing member is fixed,
wherein the deformable segment is positioned fully within the receiving aperture.

2. (Previously presented) An apparatus for sealing at least two surfaces, comprising:
a sealing member having an attachment portion fixed to one of the surfaces, said sealing member also including a seal portion connected to said attachment portion, wherein the seal portion comprises a deformable segment that faces the surfaces;

a receiving aperture defined by at least one of the surfaces, wherein said receiving aperture is adapted to receive and retain the deformable segment of the seal portion of said sealing member; and

a coating disposed on said sealing member and the at least two surfaces, said coating extending continuously across all of that portion of said sealing member that faces away from the surfaces and at least one of the surfaces such that no portion of said sealing member is exposed through the coating, wherein said coating defines a splice coincident with a distal end of said sealing member, thereby separating said coating that is disposed on said sealing member and one of the surfaces from said coating that is disposed on the other surface.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaRoche in view of Warshaw.

LaRoche discloses an apparatus comprising a sealing member having an attachment portion 50 fixed to a surface (e.g. of 14) and a seal/deformable portion 40 connected to attachment portion. The surfaces of 10 and 14 form an aperture that fully receives the deformable segment. An engagement member (the other 50) extends from one of the surfaces to further define the aperture and receive the deformable segment 40. A filler 42 is disposed in the aperture. And a coating 26 extends continuously across the sealing member and two surfaces. LaRoche discloses a mechanical fastener is used to attach flange 50 to the surface (through holes 53). However, LaRoche does not specify that a rivet is used. Warshaw teaches that it is known to use a rivet to fasten/fix a sealing member to a surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a rivet to attach the sealing member as taught by Warshaw.

7. Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hazen.

Hazen discloses an apparatus comprising a sealing member having an attachment portion 24 fixed to a surface (of 46) and a sealing portion 25 that is a deformable segment positioned fully within a receiving aperture defined by the surfaces 46. A filler 14 is disposed within an

area in the aperture. An engagement member 15 extends from one of the surfaces to further define the aperture and receive the deformable segment. A coating 48 is disposed on the sealing member and two surfaces and is continuous across the seal and at least one of the surfaces. Hazen discloses that portion 25 is made of a soft or flexible material. However, Hazen does not specify elastomer sponge. The selection of a known material based on its suitability for its intended use is considered obvious. See *In re Leshin*, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use elastomer sponge as the soft/flexible material for portion 25.

Allowable Subject Matter

8. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 2, 9-14, 25-27, and 29-36 are allowed.

Conclusion

10. LaRoche states any mechanical fastener may be used to attach the seal. A rivet is a known fastener. Warshaw shows the use of a rivet. Hazen has various components that can be interpreted as “filler” and/or an “engagement member.” And, elastomer sponge is a known soft and flexible sealing material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alison K. Pickard whose telephone number is 571-272-7062. The examiner can normally be reached on M-F (9-5).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer Gay can be reached on 571-272-7029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alison K. Pickard
Primary Examiner
Art Unit 3676

AP